THE REPORTER

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INDUCTION REPORT— FLURRIES IN JANUARY

Selective Service will probably begin inducting again in January, according to present predictions.

The Selective Service Act expires on June 24, 1950, and if Selective Service expects to have a new Act passed, then it will probably have to resume inductions in order to justify the reenactment.

Perhaps one of the reasons for the long suspension of inductions is the desire of Selective Service to build up a little backlog, so that it will be sure to be inducting men at the time when the Act comes up for reconsideration; but voluntary enlistments have been so high that the backlog is probably small.

Selective Service is now proposing the theory that its System is a strong influence in keeping up voluntary enlistments even when the selective process itself is dormant.

Probably a more realistic reason why other government agencies, such as the National Military Establishment, are willing to support this line of talk is the fear that if the draft were permitted to expire, then Americans might recapture the mood of the 1930's and begin to look upon conscription as an abnormal thing. Retaining even a dormant draft, with little flurries of inductions occasionally, helps retain the wartime attitude toward compulsory training.

KANSAS MENNONITES LOOK BACK

The Mennonites in Kansas celebrated the seventy-fifth anniversary of their immigration between Labor Day and October 12 of this year.

The final celebration was held in Memorial Hall, North Newton, Kansas. The immigration is within living memory of a number of Mennonites, twenty-four of the immigrant group being the guests of honor at a Labor Day celebration held in a large tent where the original immigrant house was erected by the Santa Fe Railroad. The immigrant house was a shelter erected until the settlers could build their private places. Representatives of the railroads were present the final afternoon of the celebration.

Peace Groups Still Colonize in Paraguay

The anniversary has special significance to Mennonites at this time because of the present importance of the Mennonite Central Committee work in helping to relocate Mennonite emigres from Russia in Paraguay.

The Mennonites in Paraguay are provided for under a law called a "Privilegium." It reads in part:

"Art. 1. Members of the community known as Mennonites who come to the country as components of a colonization enterprise, and their descendants, shall enjoy the following rights and privileges:

"1. To practice their religion and to worship with absolute liberty without any restrictions and, consequently, to make affirmations by simple 'yes' and 'no' in courts of justice instead of the oath; and to be exempt from obligatory military service either as combatants or non-combatants both in times of peace and during war;"

This Privilegium only applies to those who go to the Chaco, the wild, unsettled part of Paraguay. Those who leave the Chaco might lose the privilege.

In this respect the Paraguayan law is as much a colonizing measure as a provision for objectors. Other countries have often combined colonization with deferment. In World War I, Dutch objectors could only be relieved of service by going to the colonies. President Grant's extension of hospitality to the Kansas Mennonites may have been inspired by the desire of the railroads to fill the country. And even the Quaker settlements in early Pennsylvania were encouraged more for their colonial character than for the distinctive religious belief.

RED CHINA – COs Face a Test

The rise of the new Communist government in China may possibly be significant to a little-known group of CO's in that country.

We have it on the word of rather high government authorities that in China the chief group of objectors are the Buddhists. Except in Tibet and parts of Mongolia, the largest Buddhist sect is opposed to taking human life.

Since this group believes that the dead are reincarnated in animal form, they also refuse to kill animals, and are strict vegetarians. The refusal to kill animals is really a refusal to take human life, because of the peculiar reincarnation doctrine. The monks practice this and also some laymen. A current practice of this group of Buddhists is to buy live pigeons or live fish being sold for food and set them free or return them to the water, since this is a way of saving reincarnated human lives.

The Chinese law provides only for the Buddhist monks. It does not contain a general CO provision nor any blanket ministerial deferment. A Buddhist layman is not provided for and neither are leaders and laymen of other religions. The Buddhist monks are assigned to non-combatant services such as medical work, transportation, and communications.

However, our information from Communist countries is not nearly as encouraging.

SHOOTING WON'T DEFEAT "RELIGION OF COMMUNISM"

As reported by PEACE NEWS, *national pacifist newspaper in England, Field-Marshal Lord Montgomery, famous British general of World War II, recently told a group of Youth Service Volunteers:*

"The nations of Western Europe are prepared to fight for freedom and to preserve their way of life. The enemy threatening it is the religion of Communism.

"It is conceivable that this struggle may lead to a shooting war which we may win, but we may find that after emerging as victors, we have left Communism undefeated.'"

For instance, the Russians abolished exemption for CO's in 1936.

The Federal Peoples Republic of Yugoslavia, a Russian satellite, provides,

"Evasion of Military Service Because of Religious or Other Personal Convictions. Military persons who, because of religious or other personal convictions avoid military service, shall be punished with loss of liberty for a period up to three years.

"If the act mentioned in paragraph I of this article is committed in agreement with several persons, or if it results in serious consequences or greater damage to the army, the offender shall be punished with loss of liberty and forced labor for a period up to six years.

"If the act mentioned in the above paragraph is committed during mobilization or state of war, the offender shall be punished with loss of liberty and forced labor for at least two years and confiscation of property, or death penalty and confiscation of property." (italics supplied)

The Constitution, Art. 34, also reads, *"The defence of the fatherland is the supreme duty and honour of every citizen. . . .*

Military service is universal for all citizens." (italics supplied)

Therefore, concerning CO's in China, indications are that at present China does make some slight provision and that a Communist government, if it follows the pattern of the rest, will make none.

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Doukhobors Colored By Publicity Hounds

There have been recent press reports to the effect that the Doukhobors of British Columbia, Canada, are planning to move from Canada to either Russia or Turkey.

These reports are inaccurate. Only a small group of Doukhobors, about 1,000, are involved. These are the more extreme element who have been accused of dynamiting and burning property. Even they have done no more than approach the Ottawa embassies of Russia and Turkey to make inquiry about the possibility of migrating.

Both embassies have responded by saying that they must have more information about the people and, in the case of the Turkish Embassy, their property.

What Happened To—

Canine Pete

The Camper Who Barked at Visitors

Pete was appointed Mennonite representative to NSB. The NSB doorbell rang at 6:00 A. M. on the morning of August 15, 1949. Pete shook his sleepy head and put it out of the bedroom window. Below he saw a patriarchal beard and heard someone shout the word, "Bishop!" Supposing it was a troubled Mennonite bishop, he donned a bathrobe and went downstairs. He opened the door and was confronted by Corbett Bishop, the staunch CO who established a record of 400+ days without food during the war.

Our more reactionary element advised that he not be admitted for fear he would sit on the floor and handcuff himself to a desk until NSB agreed to some ten point program. The hysterical word was, "Call the police!"

But Pete, withstanding this advice, received him trustingly and the visit was very pleasant.

The object of the visit? Bishop was listed in NSB's callers' list as "sharing truth."

After leaving he sent Pete a little bread and butter note addressed to the National "Service" Board.

In conversation with Jim Bennett, the Director of the Bureau of Prisons said of the early visitor, "He does things like that."

Other recent NSB visitors were Barbara Shidler, the wife of the Brethren non-registrant; Charles Richert, the Mennonite non-registrant; and Richard Taylor, friend of Robert Wixom, Quaker non-registrant.

Garry Davis Supports French CO

Garry Davis, beneath his political philosophy of world citizenship, turns out to be a conscientious objector after all. This was revealed when Davis, a former American bomber pilot and son of Washington band leader, Meyer Davis, protested the arrest of Jean Moreau, one of his followers. Jean Moreau, who had already served a nine-month sentence for refusing to serve in the French armed forces, was arrested again on September 10. Davis has released a statement of his pacifist views.

Davis' protest took the form of a vigil in a tent in front of the Paris military prison in the Rue du Cherche-Midi starting at midnight, September 21st. The purpose of the vigil was to persuade the French authorities to pass a law recognizing conscientious objections or else to recognize the right of Davis to be imprisoned in the same cell with Moreau. His statement explains, "President Auriol, in welcoming me and my colleagues last December 24th, expressed his sympathy with this stand. The French people also at the Salle Pleyel and the Vel d'Hiv last winter indicated their support. Moreau however, upon expressing the same convictions is regarded in the eyes of French law as a common criminal, and sentenced to imprisonment. Therefore if French law regards moral convictions as a criminal offense, I am prepared to accept that title, and must then humbly seek my punishment by asking to serve with the other 'criminal.' Until proper legislation is passed by the National Assembly or guaranteed morally by President Auriol thereby releasing Moreau and any others under the same category, I see no other alternative."

This was on Friday night and Davis had threatened that if no action were taken by Monday, then he would call upon ten adherents of his world citizenship movement to camp with him. He planned to deal with police intervention in the spirit of non-violence.

Just as Davis was starting his encampment, in a sleeping bag, the police picked him up and took him to a police station. They warned him that he would be charged with disturbing the peace if he continued. He was held half an hour, released, and then taken into custody a second time fifteen minutes later.

However, after the night, he was released and resumed his protest outside the Cherche-Midi military prison. The world citizen sat on a folded blanket on the cobblestones in front of the prison to make his statement to the press.

The police returned within twelve hours after his second arrest and ordered him to leave. When he refused, he was taken into custody a third time.

Davis Convicted for not Having Residence Permit

He was arrested again on Sunday. This time the police said he was living in France without an official residence permit; but he was freed by an order from an examining magistrate on Monday, September 24.

Following this, five of Mr. Davis' followers appeared to camp with him and were arrested for doing so. One of them, Fernando Puma, American painter, was released on Wednesday, the 26th.

Mr. Davis also appears, from press reports, to have been taken into custody a fifth time and released. He was ordered to appear in court Thursday, the 27th, to face charges of residing in France without a permit since his residence permit had expired in March and had not been renewed.

On October 4, Davis was found guilty and given an 8-day sentence. Since he had served this waiting for trial, he was not imprisoned further. The court attributed the short sentence to extenuating circumstances. There appears to be no danger that Davis will be expelled from France.

What Would You Do?

An objector at school receives a letter from home. It is from his Department of Justice hearing officer, but it is a mimeographed form. It tells him that he will have a right to request any evidence against him before the hearing, if he chooses to see it. The objector writes to his local board asking to see the evidence against him. He receives no answer. Then he has the hearing. What would you do?

(Answer on page 4)

Status of Medical Captives Revised

In July an international agreement was made in Geneva, Switzerland governing the activities of medical troops in wartime. This new international convention should be of interest to I-A-O's. While not all of the signatories have ratified the agreement, and therefore printed copies are not yet available, we have advanced word that **among the innovations is a statement that medical troops when captured either in the field or at sea shall not be prisoners of war but shall have all of the rights of prisoners of war. The capturing nation may retain as many as are necessary to minister to the needs of non-medical soldiers of the same nationality. All medical soldiers in excess of the number necessary to administer to the needs of their own captured combatants shall be repatriated.**

So the claims of the CO are vindicated. The soldier who believes either in nonviolence or non-resistance, or even just in peace, finds himself at least partially protected by peaceful agreement from the imposition of superior force.

PEACEMAKERS MUFF LEGAL ANSWERS

By

WILLIAM E. ROSTRON, JR., A.B., LLB., (Harvard School of Law)

There are some fundamental differences between the thinking of courts and of objectors, quite apart their views on pacifism, that contribute to the long record of lost CO cases.

Objectors like to try to find a universal rule that will take care of every case. Courts on the other hand prefer to take one case at a time and to settle each case on its own facts, so that they will not interfere with their own freedom of action in future cases.

For example, Section 15 (c) of the Selective Service Act of 1948 reads, "If any provision of this title, or the application thereof to any person or circumstance, is held invalid, the remainder of the title, and the application of such provision to other persons or circumstances, shall not be affected thereby." Therefore, if by some chance any court should decide that it would be unconstitutional to require registration of someone who is religiously opposed to it, that would in no way knock out the section on registration as applied to other people. The possibility of destroying the entire Selective Service System with a single court case seems very remote.

Another false impression which the objector has is that a court will hold a statute unconstitutional every time that it is actually unconstitutional; but as a matter of fact if a court can dispose of a case on two grounds, one of them a Constitutional ground, and the other a more technical one, the court will usually dispose of the case on the narrow ground. They have said, over and over again, that it is against public policy to be holding acts of Congress unconstitutional all of the time and that a court will hesitate to rule on the question, if there is some other way of disposing of the case. Where a non-resident alien fails to register and is indicted and he wants to test the Constitutionality of requiring a CO to register, he will have difficulty even getting a court to consider the issue, because he has a perfectly good technical defense. Aliens are required to register only if they are resident in the United States. A non-resident alien may prove a foreign residence and be acquitted; and it is possible for an alien to have only a foreign residence after he has been in this country for some time. Since it is a rare case indeed where some good technical defense might not be argued, the objector will have great difficulty getting the judge to consider the Constitutional aspects first.

HOLMES, CARDOZO MOLD MODERN CONSTITUTION

Supposing the objector does overcome both of these obstacles, and that he persuades the judge to consider his Constitutional argument, and that he is willing to accept the results even though they apply to just his case, there is still a third obstacle, and perhaps the most important one.† The Constitution was written at a time when it was believed that there was a natural law more binding than mere man-made law. The habit of mind of the New England settlers of reading their Bibles regularly and of testing the validity of all their actions by the printed word, may have been the chief origin of the idea of having a printed Constitution to test all lesser laws and acts. This way of looking at the Constitution is the way that the average CO and indeed the average voter still looks at it.

But the courts have changed their attitude toward the Constitution in recent years. The change started with Chief Justice Holmes and was brought to its fullest explanation by Judge Cardozo. Cardozo thought that it was the function of the courts to keep legal doctrines up to date "with customary morality," and to give them a continually new content. This he added was judicial legislation, but he defended it. However, he even applied the same idea to the Constitution and to the conception of liberty. The meaning of the word "liberty" to Cardozo was something fluid and inconstant, changing with the time and the circumstances. It was not static and predetermined. It changed as fast as the customs." Cardozo asserted in his writing that what the word "liberty" meant in 1787, it does not mean today; and the courts have followed him in that.

Of course when we consider that the Constitution is supposed to be amendable only by a 2/3 vote of Congress and by the action of the states, and when we consider that Justice Cardozo's theory enabled a small group of judges to amend it on their own initiative, we can see that no matter how true his theory may have been, it certainly should not be permissible in American Constitutional law. The Constitution is a natural law document. People who did not believe in a natural law would never have bothered to have written it; and if the American people do not believe in natural law they would probably get rid of it by repealing it. But Justice Cardozo has had his way.

CONSTITUTION IS A LAW, NOT A BIBLE

Any CO arguing the First Amendment can see what difficulty he would have with this. His notion of morality is anything but the customary morality; and therefore all of the guarantees of the Constitution will be twisted by Cardozo's disciples so that they do not protect him. If he were going to combat it, the best way would be to bring the issue into the open; and before he ever starts to argue the First Amendment, he might argue before the court that the Constitution ought to be construed as containing uniform principles, and not in the light of Judge Cardozo's jurisprudence. Then if he wins that argument, he might stand more chance than objectors have had in the past of succeeding when he starts to argue the actual Constitutional point.

The objector going to his attorney makes the mistake of thinking that the Constitution is not a law, but a moral document like the Bible which everybody can read and understand; but it is a law. We hope therefore that the objector will be more hesitant in making up his own mind about what his legal rights are and will more frequently consult an attorney to find out what there is in his case.

VICTORS MUFF THE PEACE

The United States is still at war. That was decided in the case of United States v. William Bisso in the District Court of California last spring. The attorney in that case argued that peacetime conscription was unconstitutional, and the judge said that he did not have to decide the question because the United States was still at war. He based this decision on the opinion of the Attorney General delivered on September 1, 1945. At that time Tom Clark made a statement concerning the termination of statutes which were held to be Constitutional only under the war powers of the President. He quoted a court case in which Mr. Justice Brandeis said, "In the absence of specific provisions to the contrary, the period of war has been held to extend to the ratification of the treaty of peace or the proclamation of peace" and Judge Learned Hand who said, "Even if I were to assume that the power were only coextensive with a state of war, a state of war still existed. It is the treaty which terminates the war."

Since the United States has not concluded treaties of peace yet, the court said we were still at war, and the question of the Constitutionality of peacetime conscription could not be raised.

However, even if the treaties of peace had been signed, a court would very likely construe "to . . . repel invasions" as including more than a strict state of war. The reason for this is that the courts, wherever they have latitude, construe acts of Congress to be Constitutional in order that the government will not be handicapped in its functions. Conditions of modern warfare might also lead them to interpret the words in a new sense, as the accompanying article points out.*

*"The Congress shall have power . . . (15) To provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions." U. S. Constitution, Art. I, Sec. 8, Clause 15.

† See "Compulsory Training—Is it Constitutional?" by Harrop Freeman; American Bar Association Journal, May, 1946; V 32, p. 269.

SABBATARIAN CHURCH JOINS NSB COUNCIL

The Church of God (Seventh Day) is among those recently added to the NSB's Consultative Council.

The State Conferences of this denomination were formed between the years 1845 and 1860. The movement was closely related to the Adventist movement, of which the Seventh Day Adventist Church is one of the most widely known. When the Seventh Day Adventists adopted their name in 1861, the Church of God was formed of a remnant of the State Conferences which preferred the name "Church of God."

This group, however, traces its history back as far as the church established in Newport, Rhode Island in 1671, the oldest Sabbatarian Church in the United States. In Rhode Island, and scattered throughout many of the colonies, were churches within the Baptist movement which observed the seventh day Sabbath. The Adventist movement had its roots among these churches. Since the principle on which most of the New England churches are organized is the independence of every local congregation, and since many of them had not organized definite conferences at that early date, the historical roots are sometimes difficult to trace, but they are nevertheless there.

This Church of God should be distinguished from the Chruch of God (Anderson, Indiana), which has been a member of the Consultive Council for some time. This second Church of God places emphasis on the doctrine and experience of holness. It was part of the Holiness movement in some of the Midwestern States. It began with the work of D. S. Warner in the 1880's. The doctrine of the church is Arminian and the group practices foot washing.

The Church of God (Seventh Day) had 21 men in CPS, and the Church of God (Anderson, Indiana), 43.

What Would You Do?

Answer to Problem on Page Two

The objector made a mistake in writing to his local board for the evidence against him. When his case is still being appealed from the local board to the appeal board, the local board is the proper place to write. But the Department of Justice hearing record is separate from his Selective Service record. The information kept as a result of the FBI inquiry and hearing is in separate folders from the Selective Service material. When he wanted to see the evidence against him at his Department of Justice hearing, he should have written to the hearing officer. The hearing officer probably never received his request.

However, if the objector is not satisfied with the hearing he had, he may write a letter to the hearing officer explaining his mistake, and how it happened, and requesting that the hearing be repeated after he has had an opportunity to see the evidence against him. A hearing officer may possibly grant a second hearing in a case of this type.

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MECHANICAL ENGINEER wants permanent position with small or medium sized manufacturing company doing work not connected with armament program. Experience: 8 years research and product development, 1½ years assistant professor of mechanical engineering. B.S., Antioch College; M.S. in Engineering, University of Cincinnati. Fields of interest: Product development and design of small and medium sized mechanisms, machine construction and production. Age—28, married, one child.

Pacifists Still Keep Oldest Village

The oldest town in the United States is Oraibi, Arizona. Oraibi was founded in about the year 1150. It is a Hopi pueblo or village.

The philosophers and social scientists might find here some answers to their quest for those things in society which have the greatest power to survive. Since the Hopi are a group adhering to the peace principle the answers they find might change drastically current notions.

We must qualify our statement, "The oldest town in the United States" by adding that the Hopi do not consider Oraibi to be in the United States, but regard it as an extraterritorial part of their independent nation. The notion is not *per se* ridiciulous, since here in Washington there are many extraterritorial plots of ground on which foreign embassies are situated. The Hopi claim goes back to the fact that they never fought a war against the United States and consequently never signed a treaty. Neither have they ever been moved westward from the original land on which they live, as have been many other tribes.

So the Hopi say that Oraibi is in the Hopi Indian Empire.

Mass. Joke Turns Sour

An order of the General Court of the Massachusetts Bay Colony issued on March 12, 1638, authorizing imprisonment or any other fitting punishment for Quakers and Anabaptists from Providence, Rhode Island, who were found within the colony, has been annulled. In 1948 the old law was discovered, and the General Court revoked it as a joke.

This new liberal attitude in Massachusetts is in marked contrast to the recent Kansas decision holding that conscientious objectors who refuse to go into the Army cannot become citizens. As the law now stands objectors cannot come from foreign parts to Kansas and acquire citizenship, but there is no barrier preventing their migration from Rhode Island to Massachusetts.

CO Exemption Is a Right

For those pacifists who like to discuss whether conscientious objection is a right or merely a privilege, we state unequivocally that it is a right.

Cases decided during the war definitely established that under some circumstances neither Selective Service nor the Department of Justice could deny the objector classification to an applicant. Notable among these cases was *United States* ex rel. *Reel* v. *Badt* which held that where Selective Service had no substantial evidence against the man's claim in its folder, he was entitled to the objector classification, and that where the hearing officer's recommendation that the classification be denied was based upon a mistaken interpretation of the law, the hearing officer having erroneously supposed that under the 1940 Act the word "religious" required belief in a Supreme Being, then the hearing officer's recommendation would be set aside.

This distinguishes the status of conscientious objectors from that of Government employees. Being a Government employee is always a personnel matter, as it would be with any private employer, and therefore the Government, according to recent decisions, does not have to adhere to an orderly or fair procedure under the Constitution in its hiring or firing; but in classifying registrants either in I-A-O or in IV-E the Government must adhere to a few fundamentals of orderly procedure. **The classifying authorities must have a correct knowledge of the law and they must have some evidence against a man in order to deny his classification. It has also been decided that they must afford a hearing.**

This requirement that due process of law must be present in classification proceedings, although it need not be present in loyalty investigations, makes conscientious objection a right so long as the wording of the Selective Service Act creates a special classification for objectors.